

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

EDWARD BAILEY,

Civil No. 05-89-ST

Plaintiff,

ORDER

v.

JEFF HANSON, LES DOLECAL,
EDWARD ANDERSON, and JIM
MARAS,

Defendants.

HAGGERTY, Chief Judge:

On November 21, 2005, Magistrate Judge Stewart issued a Findings and Recommendation [34] recommending that defendants' Motion to Dismiss [23] should be granted with prejudice. Plaintiff filed timely objections to the Findings and Recommendation [42].

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This matter is now before the court pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b). A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations" made by a Magistrate Judge. 28 U.S.C. § 636(b)(1). Within ten days of being served with a copy of the Findings and Recommendation, any party may file written objections and the court shall make a *de novo* determination of those portions of the Findings and Recommendation to which objections are made. *Id.* When a party objects to any portion of the Magistrate's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate's report. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach.*, 656 F.2d 1309, 1313 (9th Cir. 1981).

The court has reviewed the record *de novo* as well as plaintiff's objections. Magistrate Judge Stewart provided a thorough articulation and analysis of the facts regarding this litigation, which this court need not duplicate here. Based on the record, this court agrees with the Magistrate Judge's determination that plaintiff failed to file the 42 U.S.C. § 1983 action within the two-year statute of limitations period as required under O.R.S. 12.110(1).¹ A total of 1412 untolled days elapsed prior to the filing of this case, which places the action well beyond the two-year statute of limitations. Accordingly, Magistrate Judge Stewart's recommendations are sound, correct and entitled to adoption in their entirety.

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¹ As discussed in Magistrate Judge Stewart's Findings and Recommendation, this court also notes that § 1983 actions are governed by the applicable state statute of limitations. *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 (2005) (citing *Wilson v. Garcia*, 471 U.S. 261, 279 (1985)). In the instant case, O.R.S. 12.110(1)'s two-year statute of limitations applies.

CONCLUSION

For the foregoing reasons, the Magistrate Judge's Findings and Recommendation [34] is ADOPTED. Defendants' Motion to Dismiss [23] is GRANTED and plaintiff's Complaint [1] is DISMISSED with prejudice.

IT IS SO ORDERED.

Dated this 5 day of May, 2006.

/s/Ancer L.Haggerty

ANCER L. HAGGERTY
United States District Judge